

EXHIBIT 1

Kathleen Koch v. Vantage Specialty Chemicals, Inc.; et al.
Proceedings had on 7/17/2024

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

KATHLEEN KOCH,)	
)	
Plaintiff,)	
v.)	No. 2023 L 686
)	
VANTAGE SPECIALTY)	All Consolidated
CHEMICALS, INC.; et al.,)	Cases
)	
Defendants.)	

Report of proceedings had at the hearing in
the above-entitled cause before the HONORABLE JOHN H.
EHRLICH, Judge of said Court, at Richard J. Daley
Center, 50 West Washington Street, Room 2306, Chicago,
Illinois, commencing at 9:00 a.m. on July 17th, 2024.

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* * * * *

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<p style="text-align: right;">Page 4</p> <p>1 THE COURT: I've got several issues to start with 2 today. Why don't we start with -- Well, there was an 3 issue with the case management order as to the Koch 4 case. 5 MR. HENSLEY: Yeah. So, Your Honor, there was 6 previously a motion to amend the Koch case that -- You 7 entered an order on June 13th, and for whatever reason, 8 the image on the Clerk's website wasn't going through. 9 We've attempted to file that amended complaint. I'll 10 hand a copy to counsel for PPG. We tried to file it. 11 The Clerk's office bounced it back as not being -- They 12 haven't been able to read that order. So if the clerk 13 could just reupload it, I think that would be -- And 14 obviously, there's a date on there. 15 THE COURT: I was going to say, we can make -- Just 16 to make sure, I'm going to add to this that it's 17 nunc pro tunc to June 13th as well just so that it's 18 clear for the Clerk. So we'll get that entered and be 19 imaged. I don't know why it didn't catch that day, but 20 we'll get that taken care of. 21 MR. HENSLEY: The clerk may not have been here that 22 day. 23 THE COURT: He may not have been. I can't 24 remember.</p>	<p style="text-align: right;">Page 6</p> <p>1 and this individual. 2 There's no basis in the law for doing it. 3 This is essentially asking you to make a judicial 4 appointment without any authority to do so. So we do 5 oppose it, and if we -- if you'd like to have us submit 6 a brief, we can do that, but we would ask that you just 7 deny the motions. 8 THE COURT: I mean, to that extent, if there's no 9 legal basis for it, then if I don't need to make an 10 order for it, it will go through anyway because it's 11 part of their settlement agreement. 12 MR. OLISS: Well, it would come up -- Well, I'm not 13 exactly sure I understood that. 14 THE COURT: If -- Regardless of whether I give it 15 any imprimatur or not, if it's a term within their 16 contract, I can't get involved. If you're saying I 17 can't get involved in their contract, then their 18 contract will stand on its own, and Ms. Yanni will be 19 appointed regardless of whether I say yes or no. 20 MR. OLISS: Exactly, Your Honor, but she won't be 21 appointed by an order of this Court, which will then be 22 used -- for which there is no authority, which will then 23 be used as, you know, the Court's imprimatur on the 24 allocations that are ultimately --</p>
<p style="text-align: right;">Page 5</p> <p>1 MR. HENSLEY: The other issue that -- I don't want 2 to take anything out of order, Your Honor. But last 3 week we had presented the Court -- Within this was a 4 schedule related to settlement, but they were motions 5 appointing the settlement neutral. And obviously, I 6 think everybody here can agree, we want to get this show 7 on the road. There were some, I'll call them, half 8 objections last week by some counsel here. We haven't 9 received a response objecting or opposing this in any 10 way. We would like to get those -- those orders entered 11 as to the allocation neutral, Ms. Yanni. 12 THE COURT: These are the orders that were provided 13 to appoint Cathy Yanni, Y-A-N-N-I, of JAMS as the 14 allocation neutral both in Medline and Vantage 15 settlements. 16 Are there any objections? 17 MR. OLISS: There are, Your Honor. These are the 18 two motions that were designated as unopposed even 19 though they were never shared with us before they were 20 filed. And we don't -- There's no basis to do it. So 21 what they're seeking is the Court's imprimatur on the 22 appointment of an administrator in a private settlement, 23 I assume for purposes of being able to say later, in 24 good faith determination, that you endorsed this process</p>	<p style="text-align: right;">Page 7</p> <p>1 THE COURT: Well, there's an authority for me to 2 appoint Redgrave. 3 MR. OLISS: Well, I think that's an open question 4 whether there's authority to appoint Redgrave, but 5 that's a different issue. 6 There's nothing in the motion that indicates 7 any basis for the Court to act on this, its imprimatur 8 on the appointment of this individual, and bearing in 9 mind that these are settlement agreements at least with 10 respect to Vantage that we have no visibility on. So 11 you're essentially being asked to endorse an allocation 12 process solely for the reason of them attempting to get 13 smooth sailing in good faith determinations in a process 14 that we can't see and where there is no authority to do 15 so. 16 THE COURT: Well, nothing can settle until I make a 17 good faith finding regardless, but that's subject to 18 something down the road. At this point, I can't get to 19 a good faith finding until I know what each specific 20 settlement is going to be; and if that has to go through 21 Ms. Yanni, it does. I don't think I'm making any -- 22 There's nothing I'm -- I'm doing by having her appointed 23 as an allocation neutral that indicates this Court is 24 finding that any settlement is in good faith or not.</p>

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<p style="text-align: right;">Page 8</p> <p>1 It's simply that she's being ordered by the Court to 2 serve as an allocation neutral to come up with the best 3 number she can as possible. It's very possible I will 4 disagree with her and find that the settlements are not 5 in good faith. 6 MR. OLISS: Well, it's also quite possible, 7 Your Honor, that when this -- if and when these good 8 faith determination motions come up, we may not be in 9 this room. We may not be in front of you. They are 10 free -- We do not object to them selecting whoever they 11 want to select as an allocation neutral, but what we 12 object to is having the Court enter an order appointing 13 somebody. And if you look in the motion, it's, here are 14 all her qualifications; this is why she's great, that 15 they can then use to present this evidence that the 16 allocation was somehow approved in advance by the Court. 17 It's an advisory opinion. I think that maybe that's 18 just an analogy, but it's completely inappropriate to 19 have the Court endorse a settlement term in advance of 20 actually having a hearing and an opportunity to 21 challenge a good faith determination. 22 THE COURT: As I said, I don't think it makes 23 any -- If you're correct, then it makes no difference 24 whether I enter this or not, because, as I stated,</p>	<p style="text-align: right;">Page 10</p> <p>1 THE COURT: -- of each of those people and then 2 their Topics 1, 6, and 38. 3 MR. KING: Yes. And then the remaining -- There 4 are disputes as to most of the remaining topics, Judge, 5 and we're hoping to issue a report and recommendation on 6 those by the end of this week. 7 THE COURT: Oh, good. Okay. 8 MR. KING: Yes. That's our goal. Those 9 depositions have been scheduled, is our understanding, 10 for next week and the following week. We commend the 11 parties for getting those scheduled within the deadline. 12 THE COURT: These are all the 206(a)(1)s? 13 MR. KING: Those are the corporate representative 14 206(a)(1) depositions, yes. I understand there are 15 individual depositions going on this week. 16 THE COURT: Apart from the 206(a)(1)s? 17 MR. HENSLEY: I think there were three that took 18 place yesterday, in fact. 19 THE COURT: Okay. So, basically, we should wait -- 20 You're telling me we should wait until we get the report 21 and recommendation before we do anything else? 22 MR. KING: Well, I think that -- Before there's a 23 ruling, yes, from the Court, yes. We have -- One of our 24 recommendations to the parties is that they proceed with</p>
<p style="text-align: right;">Page 9</p> <p>1 whether she's an allocation neutral or not pursuant to a 2 Court order or simply pursuant to the terms of the 3 contract has no effect on whether that would find those 4 settlements to be in good faith or not. 5 So over objection, I'm going to have those 6 orders entered. 7 MR. HENSLEY: Thank you. 8 THE COURT: Those will be done. 9 There were issues, I guess, with regard to the 10 Knobbe case with regard to discovery, both written and 11 oral discovery. There's still an issue. 12 Mr. King? 13 MR. KING: Your Honor, there are still some open 14 issues for -- on the discovery disputes both with 15 respect to the corporate representative depositions and 16 with respect to document productions. Those are now 17 both submitted to us, and we will be issuing reports and 18 recommendations on those, so... 19 THE COURT: Because I think I did see 20 recommendations for a ten-hour -- ten-hour depositions 21 plus three hours for -- 22 MR. KING: The individual depositions. 23 THE COURT: -- the individual deps -- 24 MR. KING: Yes.</p>	<p style="text-align: right;">Page 11</p> <p>1 the 206(a)(1) depositions, they not wait to take them 2 until all of the discovery disputes have been resolved 3 because for most topics -- not all, but for most topics, 4 the defendants have agreed to put up witnesses, and the 5 question is, what is the scope of the topics for those 6 particular witnesses. That, it seems to me, will -- 7 will either be resolved or narrowed during the course of 8 the depositions. And we can always come back and clean 9 them up, but we see no reason to delay that. 10 There's an order with regard to the 11 designation, the identification of expert witnesses 12 starting next -- beginning of next month. There was no 13 reason to delay. Let's push this thing ahead. What 14 we've seen with other corporate representative 15 depositions in this case is that even where there are 16 significant disagreements about scope, once they get in 17 the deposition, either the issues are resolved or they 18 narrow them such that they're much easier to resolve. 19 And we won't be making rulings on the scope of topics 20 in -- without appropriate context. 21 THE COURT: The sandbox gets smaller as you're 22 taking depositions. 23 MR. KING: The sandbox gets smaller, Your Honor. 24 That is correct.</p>

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Page 12	<p>1 THE COURT: How many 206(a)(1)s are there right now</p> <p>2 that are scheduled? Do we know?</p> <p>3 MR. OLISS: So I think there are some 47 topics --</p> <p>4 THE COURT: Topics, no. But 206(a)(1) deps, how</p> <p>5 many persons do we have scheduled?</p> <p>6 MR. OLISS: Well, that -- I think I can say two for</p> <p>7 each: two for Cosmed, two for Isomedix. There is some</p> <p>8 play in the joints because, depending on the scope and</p> <p>9 what's -- you know, whether certain things fall away or</p> <p>10 don't, that may change. And I think everybody's</p> <p>11 expectation -- firm expectation is that we will get</p> <p>12 these done in the next couple weeks, before the end of</p> <p>13 fact discovery. There will be some schedule issues</p> <p>14 because --</p> <p>15 THE COURT: Still -- There always is, yeah.</p> <p>16 MR. OLISS: -- people who are testifying in their</p> <p>17 individual capacity are also -- But I think we're on</p> <p>18 track to work this out.</p> <p>19 THE COURT: Good, good, good.</p> <p>20 Okay. And then the trailing cases.</p> <p>21 MR. HENSLEY: So my understanding where things</p> <p>22 stand is that -- I'll start with the deficiency letter.</p> <p>23 They did send us a deficiency letter on the outstanding</p> <p>24 issues on the plaintiff fact sheets. I believe that my</p>	Page 14	<p>1 We had responded back to defense counsel for some</p> <p>2 clarifying questions as to their proposal. I think the</p> <p>3 Court's recommendation was well taken about the number</p> <p>4 of claimants -- or number of plaintiffs in each group,</p> <p>5 that each side will select a certain number. I think</p> <p>6 we're in agreement on that. There's just some</p> <p>7 additional issues that we reached out to defense counsel</p> <p>8 on that we're seeking clarity on, and then I believe</p> <p>9 we're utilizing Redgrave to get that off the ground.</p> <p>10 THE COURT: Okay.</p> <p>11 MR. OLISS: Yeah, I'm not quite as hopeful. I</p> <p>12 mean, we did get some -- an e-mail yesterday with some</p> <p>13 clarifying questions that suggested that, again,</p> <p>14 plaintiffs will not -- individually will not submit to</p> <p>15 this process, only Edelson will. If they reserve -- So</p> <p>16 we would pick 15; they would pick 15; and then they</p> <p>17 would decide whether they agree to our 15. They'd also</p> <p>18 reserve the right to add anybody they want to, who they</p> <p>19 consider to be a preference candidate. They would also</p> <p>20 limit the discovery that we're permitted to do to where</p> <p>21 it's only marginally more than we can do anyway, and,</p> <p>22 also, they want to know whether we have the consent of</p> <p>23 all the defendants, which reaches into a larger issue</p> <p>24 here which is we don't know who is suing whom for what</p>
Page 13	<p>1 co-counsel responded stating that they were going to get</p> <p>2 a response to that back either yesterday -- I don't</p> <p>3 think it happened yesterday -- or today. So I</p> <p>4 anticipate that we'll be getting them a response on</p> <p>5 those issues.</p> <p>6 THE COURT: Was it by issue, or was it by</p> <p>7 plaintiff? I mean, how many -- How was the deficiency</p> <p>8 letter --</p> <p>9 MR. HENSLEY: I think it was a global --</p> <p>10 MR. OLISS: Yeah.</p> <p>11 THE COURT: It was a global issue.</p> <p>12 MR. HENSLEY: It was a global deficiency letter.</p> <p>13 MR. OLISS: One other -- And we don't have to go</p> <p>14 into the weeds on it. I'm sure you don't want to right</p> <p>15 now.</p> <p>16 THE COURT: No.</p> <p>17 MR. OLISS: But I think there were some instances</p> <p>18 where there appeared to be global nonresponses, so we</p> <p>19 identified those where -- you know, in every one that</p> <p>20 says, We'll supplement, things like that. So I think --</p> <p>21 But I think it was organized around categories.</p> <p>22 THE COURT: Okay.</p> <p>23 MR. HENSLEY: And then as it relates to the case</p> <p>24 management order, I know that's in front of Redgrave.</p>	Page 15	<p>1 in this case. We don't know who the defendants are in</p> <p>2 the different cases. So we do have some, what I'm</p> <p>3 concerned are, blocking issues to getting this done.</p> <p>4 THE COURT: I want to -- It sounds like a lot of</p> <p>5 that actually can be resolved and -- to that point.</p> <p>6 Maybe we should move on to the next issue.</p> <p>7 MR. KING: Your Honor, if I may just clarify one</p> <p>8 point on that. It is not clear to me that we actually</p> <p>9 have been engaged on the C- -- the dispute on the CMOs</p> <p>10 because we heard nothing from the parties for about two</p> <p>11 weeks. And then yesterday we -- Well, the day before we</p> <p>12 received the CMO that was filed on July 3rd, and then</p> <p>13 yesterday we received a communication from the</p> <p>14 plaintiffs' side, but we have not had any conversations</p> <p>15 with the defense side to understand whether they agree</p> <p>16 that we are engaged or whether they are waiting to --</p> <p>17 for the next round of negotiations. We're happy to help</p> <p>18 them. We at Redgrave will just need some clarity on</p> <p>19 that, Judge. Just wanted to clarify the record on that.</p> <p>20 THE COURT: You all have each other's phone numbers</p> <p>21 so --</p> <p>22 MR. KING: Exactly, Judge.</p> <p>23 THE COURT: -- make use of them.</p> <p>24 I think one of the other issues that -- one of</p>

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<p style="text-align: right;">Page 16</p> <p>1 the blocking issues may be the one dealing with some of 2 the briefs I received in the past week, sort of the 3 issue of the new cases against PPG and BASF. And we 4 talked about this last time, and I had sort of wavered 5 in what I thought was the best resolution. I've done 6 some legal research in the meantime. I certainly don't 7 claim to be an expert in federal removal law by any 8 means, but I guess the initial question I have is 9 whether this is, in fact, a legal question or whether 10 it's really just a factual issue.</p> <p>11 It's my understanding that plaintiff plans on 12 naming individual persons, either current or former 13 employees of BASF and PPG, as defendants in the case.</p> <p>14 MR. HENSLEY: Correct.</p> <p>15 THE COURT: Have any of those people been named 16 yet?</p> <p>17 MR. HENSLEY: They were amended in a small handful 18 of cases. The Court entered an order. I'd have to go 19 back and look at the order for the date on that. But in 20 a small number of cases, you granted leave for us to 21 amend to add in -- it's Penman and one other individual 22 witness. So they have been added in those cases. We 23 have a motion to amend that we filed yesterday -- 24 courtesy copies here -- that we intend -- it goes</p>	<p style="text-align: right;">Page 18</p> <p>1 these old cases that have been pending for five or more 2 years -- or for four or more years. So, you know --</p> <p>3 THE COURT: But the issue is, is if they name these 4 individuals that are Illinois residents, that destroys 5 diversity, so...</p> <p>6 MR. ROSELIUS: I don't think that's true, 7 Your Honor, because there's still a question of improper 8 joinder. I know Mr. Hensley litigated this in 9 Sterigenics. We think that's a different issue, and we 10 would take it up with the federal court if those 11 individual defendants are added.</p> <p>12 THE COURT: Well, then in that case -- My other 13 alternative is, why are the defendants waiting at 14 this -- why are they waiting? Why don't you go ahead 15 and file your removal petition at this point, see what 16 you don't -- you don't -- You can have more than one 17 removal petition. So if the first one fails, the 18 federal judge hopefully will tell you why he or she is 19 denying the petition. Because if there aren't enough 20 statements in the record -- I think there are -- there 21 have been, but this Court certainly considers Vantage 22 and Medline to be nominal defendants only and in name 23 only. They're solely here for purposes of the 24 settlements.</p>
<p style="text-align: right;">Page 17</p> <p>1 through kind of our plan in terms of amending to add 2 them in a large number of cases, and that's covered in 3 our brief here.</p> <p>4 THE COURT: Is there a timeline for getting those 5 people into the case --</p> <p>6 MR. HENSLEY: Our --</p> <p>7 THE COURT: -- in the amended complaint?</p> <p>8 MR. HENSLEY: Our plan would be that if the order 9 is entered today granting us leave to amend, that we 10 would be able to get our complaints on file within 11 14 days.</p> <p>12 THE COURT: When is the one-year deadline for the 13 removal statute? When does it run with regard to BASF 14 and PPG?</p> <p>15 MR. ROSELIUS: Your Honor, that's a very 16 complicated question.</p> <p>17 THE COURT: And I don't -- And I don't know -- I'm 18 asking, in part, because I don't know what type of 19 jurisdiction we are, whether it's based upon the service 20 on the last defendant or service on the first defendant.</p> <p>21 MR. ROSELIUS: It's a very complicated question, 22 Your Honor, in part, because the plaintiffs have filed 23 cases on many different dates and now have sought, as 24 you know, to bring in BASF and PPG into the shell of</p>	<p style="text-align: right;">Page 19</p> <p>1 I haven't made a finding if there's any 2 untoward conduct by the parties in trying to delay the 3 settlements. I don't think anybody wants that. But if 4 there is, we have not had -- haven't had that 5 evidentiary hearing, which there hasn't been. So I 6 don't see any untoward conduct.</p> <p>7 And moreover, I guess I have a question with 8 regard to Cosmed and Isomedix. They're out-of-state 9 corporations, and they have been in this case -- or in 10 these cases all along. So if it's -- What difference 11 does it -- What I was looking for and what I didn't 12 find -- Let's put it this way. What I was looking for 13 and what I didn't find was any -- and I don't want to 14 use the word "duty," but any preference, I guess, that I 15 am supposed to make as a state court judge in teeing up 16 a case so that it could be removed to federal court. 17 It's not my responsibility to do that. Whether it's -- 18 Whether that happens or not is simply the nature of the 19 case, but it's not my responsibility to make sure that a 20 party gets a federal forum versus a state forum. I 21 mean, that's not the purpose of --</p> <p>22 MR. CHIMERA: If I may be heard --</p> <p>23 THE COURT: -- of complete diversity of 24 jurisdiction.</p>

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Page 20	<p>1 MR. CHIMERA: If I may be heard, though,</p> <p>2 Your Honor, it is a prong for a request for leave to</p> <p>3 amend prejudice. And, you know, this is what we have</p> <p>4 been arguing all along, that Vantage -- us being put</p> <p>5 into the shell of these older cases, these five-year-old</p> <p>6 cases, you know, from PPG's perspective, with Vantage</p> <p>7 still in it. We have heard different things about what</p> <p>8 the status of the settlement process is with Vantage,</p> <p>9 and I thought it was clear enough last week that it's an</p> <p>10 ongoing process, that the earliest it's going to be</p> <p>11 resolved, you know, is in January of next year. And</p> <p>12 that has tremendous implications for the pursuit of</p> <p>13 federal jurisdiction with it being an Illinois</p> <p>14 corporation.</p> <p>15 I think it's very much a separate issue as to</p> <p>16 these individuals who -- Also, they have not been</p> <p>17 granted leave to add in, you know, Penman and any of</p> <p>18 these other individuals. I'm only aware of the Koch</p> <p>19 case being the only single case. No order has been</p> <p>20 granted leave permitting them to bring them in, to my</p> <p>21 knowledge, these global cases.</p> <p>22 THE COURT: Well, I guess, wouldn't it still be to</p> <p>23 everyone's advantage for the plaintiffs to amend the</p> <p>24 complaints they need to amend so we see which cases, in</p>	Page 22	<p>1 you asked about Isomedix and Cosmed and actually filing</p> <p>2 a petition for removal. Vantage is an in-state</p> <p>3 defendant, right?</p> <p>4 THE COURT: Correct.</p> <p>5 MR. OLISS: And that settlement, you know, has been</p> <p>6 recently announced. I'm not sure how to phrase it. You</p> <p>7 have ordered plaintiffs to file amended complaints.</p> <p>8 They have not filed amended complaints. We have been</p> <p>9 waiting for them to file amended complaints. They first</p> <p>10 moved, I think, in February to file amended</p> <p>11 complaints -- these omnibus motions where they don't</p> <p>12 specify which cases they are going to file in for PPG</p> <p>13 and BASF.</p> <p>14 They have now -- They were ordered to file</p> <p>15 amended complaints today. Instead, we get last night a</p> <p>16 motion that would completely turn this case upside down,</p> <p>17 would do the opposite of what you've been asking us to</p> <p>18 do the last several sessions, which is clean up the</p> <p>19 pleadings, make this thing make sense. Instead, they</p> <p>20 have had -- I'll give you an example. We have two cases</p> <p>21 set for January. Under their motion, we would add seven</p> <p>22 defendants in one and five in another. Okay? This is</p> <p>23 just the opposite of the progress you've been asking for</p> <p>24 and the opposite of what you ordered.</p>
Page 21	<p>1 fact, they have added Illinois residents, which would</p> <p>2 destroy complete diversity so those cases would remain</p> <p>3 here? And then see which cases they haven't been named</p> <p>4 in, in which case you could file a petition for removal</p> <p>5 in those cases to federal court.</p> <p>6 MR. CHIMERA: I think the only issue, Your Honor,</p> <p>7 is, we oppose their motion, which, by the way, was filed</p> <p>8 less than 12 hours before the hearing this morning, a</p> <p>9 repeated practice of sand- -- you know, putting us in a</p> <p>10 really bad position of not having proper notice of the</p> <p>11 motions they're filing. But suffice to say, we just --</p> <p>12 we object to their motion for leave to add these --</p> <p>13 THE COURT: If you're objecting based on notice,</p> <p>14 that's fine. I'll grant your objection, and we'll</p> <p>15 consider this next week.</p> <p>16 But I'm just letting you know where I'm going</p> <p>17 with this. It seems to me to make sense to allow them</p> <p>18 to put in whoever they're going to put in, in as many</p> <p>19 cases as possible. If -- If you think there are issues</p> <p>20 of improper joinder, that's an issue for the federal</p> <p>21 court, not for me, which, again, only augers in favor of</p> <p>22 the defendants filing a petition for removal at this</p> <p>23 point rather than waiting.</p> <p>24 MR. OLISS: Judge, I'd like to address the question</p>	Page 23	<p>1 So our hope and expectation, based on our</p> <p>2 conversations with you in this room and with plaintiffs'</p> <p>3 counsel, was that they were going to do what they were</p> <p>4 instructed to do, just file the amended complaints that</p> <p>5 do not include Medline and Vantage, in which case the</p> <p>6 diversity question is plain. But they won't do that,</p> <p>7 and time is ticking. And instead of doing that, they're</p> <p>8 adding maintenance guys from -- or seeking to add</p> <p>9 maintenance guys from facilities in order to destroy</p> <p>10 jurisdiction.</p> <p>11 THE COURT: But I've already -- I've made a</p> <p>12 decision that I'm not going to -- any amended complaint</p> <p>13 is not going to -- Or let's put it in the positive. Any</p> <p>14 amended complaint will name Medline and Vantage in any</p> <p>15 amended pleading because I'm not going to get rid of</p> <p>16 them until a good faith finding is heard. So they're</p> <p>17 not going away. I'm not dismissing them out now with</p> <p>18 leave to refile in case -- if the settlements fail.</p> <p>19 MR. OLISS: Okay.</p> <p>20 THE COURT: So I assume in any amended complaint,</p> <p>21 there is going to be notice of defendants, of Medline</p> <p>22 and Vantage.</p> <p>23 MR. OLISS: And, obviously, I respect your decision</p> <p>24 on that. That's the conversation we were having last</p>

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Page 25	<p>1 objecting or filing motions to dismiss.</p> <p>2 And I will say this right now. If you're</p> <p>3 adding five to seven people in cases that are scheduled</p> <p>4 to go to trial in January, I won't have that. That's</p> <p>5 not happening.</p> <p>6 MR. CHIMERA: This is why we object, Your Honor.</p> <p>7 And, again, we just received this last night, this</p> <p>8 proposal.</p> <p>9 THE COURT: But, again, isn't that the kind of</p> <p>10 thing you can make in a motion to me once we see what</p> <p>11 the amended complaints look like? I think you've got to</p> <p>12 take it one step at a time. See what the amended</p> <p>13 complaints are like. Then you can come in on a motion</p> <p>14 to say, They have added five people for a trial in</p> <p>15 January. They have never been -- I mean, we have no</p> <p>16 discovery done on any of these people. There's</p> <p>17 certainly no way to get discovery done on five new</p> <p>18 defendants between now and January.</p> <p>19 MR. ROSELIUS: And, yet, we run into problems with</p> <p>20 the one-year rule, Your Honor, referenced when they're</p> <p>21 adding BASF and PPG five years after a complaint is</p> <p>22 filed into the shell of an old complaint.</p> <p>23 MR. HENSLEY: But they haven't been added yet, so</p> <p>24 this one -- this whole thing about the one year, they</p>	Page 27	<p>1 lawsuit? That's fine. They don't even need leave to do</p> <p>2 that, to file a brand-new lawsuit. But to shoehorn us</p> <p>3 into those older cases, there are tremendous</p> <p>4 implications for removal given, you know, Vantage being</p> <p>5 an older company, as counsel for BASF has said too. You</p> <p>6 know, this misjoinder issue is another potential issue.</p> <p>7 You know, they certainly haven't been granted leave to</p> <p>8 name these individual defendants in the amended</p> <p>9 complaints yet.</p> <p>10 But to cut to the chase, I just think</p> <p>11 brand-new complaints is the cleanest way to go about it.</p> <p>12 Let the process for the Vantage settlement play out.</p> <p>13 They can file new complaints against the new defendants</p> <p>14 who are brand new to the litigation.</p> <p>15 THE COURT: Again -- And I appreciate that, but I</p> <p>16 don't think that's the way to go.</p> <p>17 Moreover, I -- One of the problems I had in</p> <p>18 thinking about this over the last couple of weeks was</p> <p>19 judicial economy and the fact that in naming an</p> <p>20 amended -- having an amended complaint bringing in BASF</p> <p>21 and PPG also then does affect the remaining active</p> <p>22 defendants, Isomedix and Cosmed, to the extent that</p> <p>23 there is -- there could be issues of comparative</p> <p>24 negligence. I don't know. But to have an issue</p>

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Page 28	<p>1 addressed in separate litigation in state and federal</p> <p>2 court, I can tell you that any judges won't be as bald</p> <p>3 as I am from having to deal with those sorts of issues.</p> <p>4 It's not good to have multiple jurisdictions</p> <p>5 hearing the same issues arising out of the same set of</p> <p>6 facts. And for that reason, there's also -- There is</p> <p>7 nothing in the rules or in the statute that prohibits an</p> <p>8 amended complaint being -- bringing in new defendants.</p> <p>9 I realize you have -- you have defenses, and they may be</p> <p>10 very good defenses in terms of statute of limitations or</p> <p>11 statutes of repose, but that's all down the road, again.</p> <p>12 And, again, none of that denies you the opportunity to</p> <p>13 file a petition for a removal at this point or to file</p> <p>14 notice of removal once you see what the amended</p> <p>15 complaints look like. I think the first step is to see</p> <p>16 what the amended complaints look like.</p> <p>17 MR. OLISS: Your Honor, respectfully, the first</p> <p>18 step is for them to meet their burden, which they</p> <p>19 acknowledge they have, in order to get leave to amend</p> <p>20 these complaints, and it's not simply that leave is</p> <p>21 freely granted. They're claiming that these complaints</p> <p>22 relate back, in the case of Isomedix and Cosmed, to</p> <p>23 complaints that were filed years and years ago. They</p> <p>24 acknowledge that they must demonstrate that these</p>	Page 30	<p>1 will be reading them strictly. If I believe that -- Let</p> <p>2 me say this: And we all know, statute of limitations,</p> <p>3 statute of repose are legal questions, but they're based</p> <p>4 upon the facts, and they are ultimately factual</p> <p>5 questions for a motion for summary judgment. But at the</p> <p>6 same time, I'm going to be reading the complaints, and</p> <p>7 if I see that there -- it's hazy in terms of when was</p> <p>8 the first diagnosis or when a person lived where for</p> <p>9 what periods of time, and all of that is unclear, I'll</p> <p>10 be dismissing those complaints out. I mean, I'm not</p> <p>11 going to have these hanging around, but that's on an</p> <p>12 individual, case-by-case basis.</p> <p>13 MR. HENSLEY: And that's exactly what the Appellate</p> <p>14 Court --</p> <p>15 MR. OLISS: In that instance, they will have not</p> <p>16 met their burden for leave, as they have laid out in</p> <p>17 their own motions, and they will have defeated most</p> <p>18 likely the jurisdiction -- the diversity jurisdiction</p> <p>19 because -- unless that's all going to happen in the next</p> <p>20 30 days. And I will tell you the other thing, Judge --</p> <p>21 And I know --</p> <p>22 THE COURT: But you're going to --</p> <p>23 MR. OLISS: -- I'm a little frustrated --</p> <p>24 THE COURT: -- you're going to lose diversity</p>
Page 29	<p>1 individuals are being added and corporate entities are</p> <p>2 being added, should have known that there was a mistake</p> <p>3 in not adding them earlier. That is a preposterous</p> <p>4 proposition but, at the very least, unsupported in their</p> <p>5 briefing.</p> <p>6 There are legal issues that need to be</p> <p>7 addressed, and there is a burden that needs to be met</p> <p>8 before they can be given leave to turn over the table in</p> <p>9 this case and add a bunch of defendants purely for</p> <p>10 tactical reasons and to defeat our jurisdictional</p> <p>11 rights.</p> <p>12 THE COURT: Those are all --</p> <p>13 MR. OLISS: That's the one step at a time I would</p> <p>14 suggest --</p> <p>15 THE COURT: Those are all excellent arguments once</p> <p>16 a motion is filed to dismiss the amended complaint.</p> <p>17 It's --</p> <p>18 MR. OLISS: That's the standard for leave to</p> <p>19 obtain -- or to obtain leave to amend.</p> <p>20 MR. HENSLEY: The standard --</p> <p>21 THE COURT: Leave to amend is to be freely granted,</p> <p>22 and if the -- And I will give you -- I've looked over</p> <p>23 some of the complaints. I think there are some</p> <p>24 sufficiency problems in the way they're pleaded, and I</p>	Page 31	<p>1 jurisdiction anyway if they're going to name individual</p> <p>2 defendants. You've lost diversity jurisdiction</p> <p>3 automatically.</p> <p>4 MR. OLISS: Well, that's not necessarily true.</p> <p>5 But let me tell you what happens here. They</p> <p>6 file motions to amend. They refuse to actually attach</p> <p>7 what the amendments are going to be for individual</p> <p>8 defendants or to clearly identify who is in, who is out.</p> <p>9 Then while they're pending, they have the plaintiffs</p> <p>10 whose cases they want to go forward withdraw from the</p> <p>11 motion to amend so that they can get a trial date, or</p> <p>12 they file an amendment that's different than what they</p> <p>13 got leave to file and they add new defendants. And it's</p> <p>14 a constant shell game of defendants in, defendants out.</p> <p>15 And I have zero confidence, nor should you,</p> <p>16 Your Honor, that if you grant this motion for leave to</p> <p>17 amend, that we'll actually see those amendment</p> <p>18 complaints or, if we do, they will look anything like</p> <p>19 what's being asked for.</p> <p>20 MR. CHIMERA: I just want to reiterate our</p> <p>21 objection based on those -- We received this less than</p> <p>22 12 hours before the hearing. We would like an</p> <p>23 opportunity to respond in writing. I think more</p> <p>24 briefing is needed on this issue of leave to amend and</p>

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1 the standard and how freely it's given in different
2 contexts. I don't see this as conforming pleadings to
3 proofs or trying to update based on something learned in
4 discovery. I think this is a bridge too far, and we
5 object based on notice. We would like an opportunity to
6 respond in writing to what was filed untimely.

7 THE COURT: You can file something by next Tuesday
8 because we'll be meeting -- Or wait a minute. Can I do
9 next Wednesday? No, I can't do Wednesday next week.
10 We'll have to do Thursday of next week, assuming I'm
11 still alive by then.

12 So if you want to file something, file it by
13 Tuesday.

14 MR. OLISS: I'm sorry, Your Honor. You're saying
15 Wednesday the 24th?

16 THE COURT: I'm sorry, no. Thursday the 25th at
17 8:30.

18 MR. HENSLEY: I do have a courtesy copy of the
19 brief that was filed yesterday if you'd like it,
20 Your Honor.

21 THE COURT: If the motion doesn't -- Does the
22 motion attached amend the amended pleadings?

23 MR. HENSLEY: It does, and the proposed civil cover
24 sheet that we would recommend be filed with each

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1 complaint as well, identifying settling defendants,
2 non-settling defendants.

3 MR. CHIMERA: I disagree with that, but we'll lay
4 it out in the briefing, Your Honor.

5 THE COURT: But this is what you all -- what was
6 received by all the defendants?

7 MR. HENSLEY: Correct.

8 THE COURT: Okay. At some point, folks, this case
9 has to move forward. You're doing an amazing job of
10 preventing me from moving this case along, and I'm
11 getting more and more frustrated by it. But we'll see
12 what happens next Thursday at 8:30.

13 Like I said, if you've got anything to file,
14 file it by Tuesday. Put it in my box, please, outside.
15 Okay?

16 MR. HENSLEY: Understood.

17 MR. OLISS: Thank you, Your Honor.

18 THE COURT: See you then.

19 (Which were all the proceedings had
20 in the above-entitled cause on this
21 date.)
22
23
24

11 (Pages 32 to 33)

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF COOK)

4 Enza Tenerelli, being first duly sworn, on
5 oath says that she is a Certified Shorthand Reporter and
6 Registered Professional Reporter, doing business in the
7 City of Chicago, County of Cook, and the State of
8 Illinois;

11 And that the foregoing is a true and correct
12 transcript of her shorthand notes so taken as aforesaid
13 and contains all the proceedings had at the said
14 hearing.

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